# AN ACT

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# ACCIDENTS TO WORKMEN

Text of the Imperial Statute and of the French law upon the matter.

SPEECH MADE IN THE LEGISLATIVE COUNCIL, ON JUNE 1st, 1904,
BY THE HONOURABLE HORACE ARCHAMBEAULT,
ATTORNEY GENERAL OF THE
PROVINCE OF QUEBEC.

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Quebec (Province) Attorney General's ...

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FROM

# ACCIDENTS TO WORKMEN

SPEECH DELIVERED BY THE HON. HORACE ARCHAMBEAULT, ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC, IN THE LEGISLATIVE COUNCIL, ON 1st JUNE, 1904, ON MOVING THE SECOND READING OF THE BILL ENTITLED: "AN ACT RESPECTING COMPENSATION FOR DAMAGES RESULTING FROM ACCIDENTS TO WORKMEN."

HONOURABLE GENTLEMEN,

The Bill of which I have the honour to move the Second Reading, relates to accidents which may arise from work or in connection with work.

We have no special legislation in the matter. We are governed by the general principles which apply to delicts and quasi-delicts. These principles are laid down in articles 1053 and 1054 of the civil code. If they are applied to accidents arising from work, they mean that an employer is responsible to his workmen for damages caused by the former's fault or by the fault of persons under his control.

This is what is called *Faute Delictuelle.*

An accident to a workman may be occasioned by different causes. It may be caused: 1. by the fault of the

master or employer; 2. by the fault of the workman or employee; 3. by the fault of both employer and workman; 4. by the fault of a third party; 5. by a fortuitous event or irresistible force; 6. by an unknown cause.

*Fault of the master or of the workman.*—In the two first cases, there can be no difficulty theorifically, in deciding who must be held responsible for any damages which may be caused by the accident. As the fault is the basis of all responsibility, in the first case the master is held responsible, and in the second, the workman

*Faute commune.*—When there is fault on both sides, the rule established by our jurisprudence is to apportion the damages, and the loss is divided between both parties, employer and workman in proportion to the extent of the fault of each. The victim is not entitled to full damages seeing he was partly to blame. On the other hand, he has a right to some compensation, seeing the other party was equally in fault. The extent of each party's fault is considered and the loss is divided in proportion.

This has not always been the rule applied by our courts of justice, and our jurisprudence fluctuated a long while before arriving at its present state. The divergency of opinion was due to the difference which exists between English common law and French law.

In England, the *faute commune* is called *contributory negligence;* and it matters not which is the principal or greatest fault, whether it is the employer's or the workman's fault; the question is merely what has been the proximate, the immediate cause of the accident, *causa causans.* It is the party in fault who is held responsible for the consequences of the accident. In France, the rule which is applied when there is *faute commune,* is the rule previously mentioned, viz: that the loss must be apportioned to the extent of the fault of each party.

Until recently, our jurisprudence was altogether unsettled. In 1887, in Cadieux *vs* C. P. R. (29 S. C. R. p.

170), Chief Justice Dorion spoke with approval of the French rule, adding, however, that up to that time the doctrine had not been adopted here. Since 1887, several contradictory judgments have been rendered. But the French rule has prevailed, and was finally sanctioned by the Supreme Court, in 1899, in Price *vs* Roy (29 Supreme Courts Reports, p. 494).

*Fault of a third party.*—Thirdly, an accident may be due to the fault of a third party.

In this case, if the party in fault is an outsider, a person over whom the master has no control, the victim has recourse against the third party alone. It is the same rule which is applied here, namely, that every person is responsible for the damage caused by his fault, or by the fault of persons under his control.

But if the party in fault, instead of being a stranger, is a fellow-employee, a fellow-workman, the master or employer under the same rule is held responsible. However, the master is held responsible only when the fellow-workman, whose negligence caused the injury, committed the offense while at work in the execution of a duty assigned to him by the master. Otherwise the negligent party would not be under the control of the master, and the latter could not be held responsible.

Here again, our jurisprudence varied, and was contradictory for the same reason as for the *faute commune*, viz: the difference which exists in the matter between English and French laws.

The French doctrine is the rule I have just mentioned: the employer is responsible if the negligent party is in his employ, and if he caused the accident while in the execution of his duties.

In England, the rule is different. There, the master is not liable if he had selected proper and competent workmen. It is the doctrine called *of Common Employment.* The workman is assimilated to a tool. When the master

has furnished his workman with adequate materials and proper tools, he is not liable for any accidents which may be caused by these same tools. Competent workmen may be negligent, and may be the cause of some accident. In both these cases, the master has taken every possible precaution; he is not in fault, and can not be held responsible towards the victim for the accident.

Such was the rule of English law previous to 1880. Since that date, two statutes have altered the principle heretofore in force, and, on that point, English law is today exactly the same as the French law and our own. The first statute, passed in 1880 (The Employers Liability Act of 1880), enacted that the employer would be held responsible if the fellow-workman, whose negligence caused the accident, held in the establishment a position of authority over the injured man, and ordered him to do the act which led to the accident. A second statute, passed in 1897, (The Workman's Compensation Act, 1897) sweeps away that distinction, and lays down the rule that the employer is responsible for damages caused by one of his employees to a fellow-employee, in every case, even if the negligent workman was not in a position of authority over the injured man, and did not order him to do the act which led to the accident.

In this province, certain judges began by applying the doctrine of English law as it existed previous to 1880. But our jurisprudence seems to be settled to day; the master is always liable for damages caused by his workmen in the execution of their duties. The Supreme Court itself sanctioned this rule, in 1887, in Robinson *vs* C. P. R. (14 Supreme Court. pp. 105 & seq. *Vide* page 114 with reference to the question of responsability for negligence of fellow-workman).

*Fortuitous Event —Irresistable force.*—An accident may also be caused by a fortuitous event or by irresistable force.

In such a case, there is no fault, either on the employer's part, or on the workman's.

Therefore, as the basis of liability is fault, each party bears the damage caused by an unavoidable accident, due to a fortuitous event or irresistable force.

*Unknown Cause.*—Here, again, nobody is in fault, since the cause of the accident is not known. No liability is incurred either by the master or by the workman. They both bear the damage caused by the accident, without recourse, the same as in the case of fortuitous event or irresistable force.

We also may assimilate to an unknown cause, the case where it is certain there is fault somewhere, but where there is no evidence as to at whose door it might be laid; who is in fault ? Is it the master ; is it the workman ; is it a third party ? The victim of such an accident has no recourse.

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To summarize the rules which we have just laid down, it is the fault which is the basis and foundation of liability in our law. Every person who is in fault, personnally, or through some person under his control, is liable for any accident which may result from that fault.

If there is no fault, as in the case of fortuitous event or irresistable force, or of unknown cause, or again of some fault which can not be fixed upon any one in particular, each party bears the damage incurred through the accident.

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The object of the Bill which I have the honour to present is to replace, in case of accidents arising from work, the principles which we have briefly examined, namely : the theory of liability founded upon fault, by a new principle of responsibility. It consists in the employers being held responsible for all the consequences of any accident, though they be not in fault, to the same

extent as they are liable when the accident is caused by their own fault

The principle of responsibility in our law to-day is negligence – *faute delictuelle.* The principle of the proposed legislation will be the *risque professionnel.*

*Risque professionnel* is the risk which is inherent in a profession or in a trade, apart from all considerations of fault.

Theoretically, the principle of the *risque professionnel* lies in the doctrine that every accident, by the simple fact that it may arise from work, assures to the victim the right to obtain a compensation.

This new theory arises from considerations of equity and justice. Half of the accidents from work are caused by a fortuitous event, or are due to some undertermined cause They are the result of the nature of the work, and, as the danger of the work increases, accidents become more frequent. The toiler, victim of circumstances, is not to be condemned to the poor-house. He is entitled to indemnification. This right to reparation results from the industry, the trade itself which creates the danger inherent in the nature of the occupation.

If danger is inherent in the nature of the work, the accidents are a charge against the concern, to be deducted from the profits. The master takes into account in his profit and loss sheet, the wear and tear of his buildings, of his appliances and tools ; he provides for the dead stock, and sets aside a reserve fund. Why could he not do the same as regards his human tools ? Why could he not make the same provision for the wearing out of his workman's strength, and provide for the accidents which may happen

We must not overlook the fact that it is the employer who directs the installation, the furnishing and the running of the shop ; it is he who introduces the motors and the machinery. It is he who gives the orders. It is

he who pockets the profits of the entreprise. It is only justice that he be made to bear the liability and the risk. He has all the favourable chances ; he should be called upon to bear the unfavourable. Compensation to the victim of any accident which may happen, should be classed amongst the unfavourable risks of the enterprise, which the employer must provide for in the general lay out of the concern.

The conditions which gave birth to the old theories and laws, were very different from those which modern industry has necessitated.

In olden days, the law knew nothing of steam and locomotives, of dynamoes, of the vast noisy workshops, full of smoke, of whizzing wheels, of strange chemical smells and glaring electric lights.

The workman, in those days, was master of his tools. He could, as a generale rule, protect himself by the exercise of ordinary precaution His implements were few and simple, and none of them moved unless he handled them.

But under modern conditions, everything is changed. The modern toiler is in daily contact with complicated machines, dangerous,irresistible. He must put in motion, handle and control terrible explosives. The workshop has become for the toiler a perpetual menace to life and limb; the least oversight, the slightest carelessness on his part may be fatal and the cause of a disaster. The workman counts for naught in the midst of the dangers which surround him ; his personality and initiative disappear ; he becomes an animated machine, a living part of the machinery which masters him, which dominates him ; he is swept on by a force superior to his own.

The rush of work must also be kept sight of, as well as the fact that force of habit very often renders the workman careless, thereby causing accidents which might have been very easily avoided. The toilers vigilence is

asleep ; the enemy lurks for him and lies concealed under the most harmless appearances.

The master may have the best and newest plant. He may spare no expense and no vigilance in adopting every means for protecting his men. The workman may be himself always on the watch But all this cannot prevent an accident. There will be a terrific explosion ; a boiler will burst ; the shop will be shattered into splinters ; hundreds of lives will be lost ; thousands of young children, of widows, of old parents will have been deprived of their bread winner and protector. And yet, neither the employer not the workman is in fault The accident was caused by some mysterious flaw in the machine, or was due to some cause which human prudence could not possibly foresee nor prevent. Industry itself is alone responsible.

Modern industry has thus brought about a certain amount of unfortunate risks and a whole chapter of unforeseen and consequential accidents which it is often impossible to avert. The contemporary accidents differ entirely from those of former times. The latter were simple, plain, manifest, isolated ; to day, they are mysterious, obscure, collective.

In presence of the transformation in the nature of the casualties, must we still apply the same old theories of law to redress grievances and to compensate for misfortunes which modern industry sows with the same hand as it erects palaces and monuments ?

Could the most vivid imagination foresee such an extraordinary development of industry, when the principles which have until now governed in matters of delict and quasi delict, were inscribed in our statutes ?

Though these principles might have been founded on equity and justice when the accident, in most instances, was caused by some fault, could they remain part and parcel of the laws of this province now that one half of

the accidents arising from work are due to causes where no fault is attributable to any one in particular ?

The conscience of the modern legislator is shocked at such a notion of justice and injustice. Law is founded upon equity. And equity wills it that the law should not remain inefficacious to uplift a poor toiler, victim of the execution of his duty The legislator must not forsake the wounded soldier of industry, because, in his attention to his master's interests, he forgot for a moment to think of his own safety, and was struck down by the roadside, in the terrific struggle of the courageous, conquering and almighty power of human genius against the mysterious and unruly forces of modern industry.

These sentiments which I have just freely expressed, no doubt inspired the law-makers of the old countries of Europe, when they struck out of their statutes the theory of the *faute délictuelle* to replace it by that of the *risque professionel*, and adopted the latter as the basis of liability in matters of accidents arising from work.

Switzerland was the pioneer in this movement. In 1881 (25th June) that country passed a federal law enacting that the employer was to be liable for accidents, in certain employments, without being in fault.

In 1884, Germany followed the example of Switzerland and adopted legislation which has been the model upon which other countries have based theirs, and which affords more ample protection to the workman than the legislation of any other country.

The theory of the *risque professionel*, as regards accidents to workmen, has since been adopted, by Austria in 1887, Norway in 1894; Finland in 1895; England, 1897; Denmark, Italy and France in 1898; Spain, New Zealand and Australia in 1900; Holland and Sweden in 1901. (See Bulletin of Labor, May, 1902, published at Washington, Summary, page 550).

We must confess that if the different countries of Europe, divided as they are from each other by immemorial prejudice, came so easily to an understanding to accept the new theory of liability, it is surely the best evidence that the old theory is no longer in harmony with the present conditions of social economy, and that they felt it had become necessary to replace the old principles by legislation more in conformity with modern conditions, more satisfactory to our modern conscience, and more christian like in our enlightened and civilized century.

We have just seen that the theory of the *risque professionnel* was sanctioned for the first time by statutory law in 1881. Nevertheless, that same principle existed in the minds of the legislators years before it became law.

As early as 1848, M. Vivien, Minister of Public Works, in France, sanctioned this principle by certain administrative measures. He declared that the care and relief which should be afforded to workmen employed in public works, in case of illness or accident incurred while at their task " constitute a charge upon the entreprise, a debt imposed by the rules of law, as well as by those of humanity ".

In 1882, a future President of the French Republic, Félix Faure, proclaimed the same theory as follows :

" We are of opinion that it is a mistake, in matters of " toil and toilers, to subordinate to the proof of the fault, " the compensation of loss or damage caused by an acci- " dent ; in most cases neither the employer nor the " employee is in fault. All work has its risks. Accidents " are the sad, but unavoidable consequence of toil " itself ".

In their turn, the jurists, always anxious to establish the exact rule of justice and equity by which may be determined rights and obligations arising from all human events, scruted the legal texts for principles that might relieve the poor victims of the new conditions brought about by modern industry. Theories more or less ventu-

resome, more or less ingenious or audacious, were imagined.

The jurisprudence, dominated by an antiquated conception of fault, could not bring itself to accept as sound doctrine the new theories that assailed it from all sides. However it could not but inhale the new spirit which had modified the views of the jurists; and from time to time, in applying the law to the facts, the courts came to make, perhaps unwittingly, obvious concessions to the new ideas.

A time soon came when the legislator had to intervene. He had to submit to the pressure of public opinion, which in the end always forces the resistence of interests, even legitimate, to give way before the justice of righteous claims.

The theories which guided the legislator towards the principle which was to prevail in most of the countries of old Europe, the principle, of the *risque professionnel*, were called the theory of *responsabilité contractuelle*, and that of *responsabilité légale.*

1 *Responsabilité contractuelle* This theory is also known as the *renversement de la preuve.* It was expounded by two renowned jurists: Mr. Sainctelette, a former Belgian minister. and Mr. Marc Sauzet, a member of the law faculty of Lyons.

The theory is founded on the principles of the contract of hire of personal services.

The hire of services of workmen, claim the exponents of the *responsabilité contractuelle*, obliges the master to supply to his employees tools and machinery adequate to ensure their security. In other words, every contract of workmen's services implies a tacit guarantee of safety on the master's part towards the workmen. If an accident occurs, the employer violates this implied guarantee against casualties. It is thus sufficient for the victim to prove the accident, to be entitled to a compensation; for

he has then established the essence of his right, the failure on the master's part to fulfil the obligation he had contracted.

This system was called that of the *faute contractuelle* because the employer's responsibility rests no longer upon a fault arising from a delict or quasi delict as in the system of the *faute delictuelle*, but rather upon a fault proceeding from the inexecution, by the employer, of an obligation or promise implied in the contract.

The system of the *faute contractuelle* has also been called *renversement de la preuve* as in opposition to the theory of the *faute delictuelle* according to which the workman has to prove the employer's fault, to be entitled to an indemnity.

Here, there arises from the accident itself a presumption of fault, and the employer is bound to prove that the accident was not attributable to defects or wear and tear of his tools or machinery, but rather to causes for which he cannot be held responsible, be it a fault on the employer's part, a fortuitous event, or irresistible force.

In other words, the onus of proof, instead of being upon the workman, rests upon the employer. It is the inverting of the proof.

The system of the *faute contractuelle*, or of the *renversement de la preuve*, was endorsed by a large number of authors The jurisprudence itself, looked upon it with favour at first, especially in Belgium. But this success was of short duration, and the courts finally set it aside to return to the old theory of the *faute delictuelle*. They refused to recognize in the contract of hire of services an implied guarantee of safety, the object of this contract being to establish the nature of the services and the price of hire. It cannot be presumed that from the sole fact that the master has hired a workman's services, he intends to guarantee him absolute security. If the contracting parties had intended to provide for such eventualities, they would have defined their position either by stipul-

ating such a clause expressly, or by excluding it from the contract.

Nevertheless, though the courts refused to admit the theory of the *faute contractuelle*, they made several wide breaches in that of the *faute delictuelle*, and we may apply to them the remark of a renowned jurist : " The homage " they now rendered to the classical theories of the code, " was merely platonic ".

For instance, in a decision of the Court of Appeals of Rouen, on the 3rd December 1898 (Sirey 1899, 1, 197) the case was that of an accident caused by the derailing of a train. It is true that the court decided that the victim could not hold the employer liable for the accident without having proved some fault on the employer's part ; but at the same time, the court found a presumption of fault against the company in the mere fact of the derailing of the train.

We must admit that between this theory, of presumption of fault by the mere fact of an abnormal accident happening, and the theory of the *faute contractuelle*, there is not a vast difference. Nevertheless, the jurisprudence refused to accept expressly the theory of the *faute contractuelle*. *La Cour de Cassation* rejected it positively, in Belgium and France. (See Carpentier—Répertoire du Droit français. *Verbis* Responsabilité Civile, No. 1453).

2. *Responsabilité légale.*—The theory of legal responsibility is based upon the principle of article 1384 of Code Napoléon, enacting that every person is responsible for damage caused by things which he has under his care. This system has been styled that of the *responsabilité du fait des choses inanimées.*

This system has had two champions especially : Mr. Raymond Saleilles, who published on the subject a work entitled : " Les accidents du travail et la responsabilité civile " ; and Mr. Louis Josserand, who also published a pamphlet on the same subject intituled : " De la responsabilité des choses inanimées."

Josserand formulates as follows the theory of the legal responsibility :

" When damage is really caused by something belonging " to us, we are always and necessarilly obliged to repair " it even though we have been guilty of no offence, nor " of any culpable omission ; for our responsibility has its " source, not in a *faute délictuelle* or *contractuelle*, but in " the law.

" The plaintiff, who claims an indemnity, has only to " adduce proof, generally already made, as to the relation " of cause and effect between our property and the damage " suffered ; it is the objective theory which is substituted " to the subjective. ", (Josserand, p. 53).

Here the obligation rests rationnally upon the notion of the risk which caused the accident, and the victim must receive compensation.

On the contrary, in the theory of the *faute delictuelle*, as well as that of the *faute contractuelle*, it is always the fault which is the basis of liability. The only difference between these two systems in that in the *faute delictuelle*, the workman is bound to prove the accident and some fault on the master's part, while in the theory of the *faute contractuelle* the proof of the accident establishes a presumption that the employer is in fault. But in both theories, the fortuitous event is borne by the victim. On the contrary, in the theory of legal responsibility, the fortuitous event is borne by the master. The accident is caused by something which the master had under his care ; that alone is sufficient to render him responsible.

As one can see, of the three theories which have been discussed, the theory of the *responsabilité délictuelle*, that of the *responsabilité contractuelle* and that of the *responsabilité légale*, it is the last one which the most ressembles the theory of the *risque professionnel*.

As in the *risque professionnel*, the master is held responsible, under the influence of that idea of equity that he

should be liable towards the third parties, of any damage his property may cause, as he profits by the advantages which the thing may afford, he should be held, as a natural charge, to bear the consequences of such risk.

*La Cour de Cassation* hesitated a good deal before coming to a definite decision as to the value of this system. A first decision admitted the principle of legal responsibility. But two later judgments repulsed it, and the principle of the fault finally prevailed. The master, to be liable for damage caused by something under his care must be in fault in some way or other. (Charpentier, *Responsabilité Civile*, (No 457).

So, it was the theory of the *faute délictuelle* which finally prevailed. The French jurisprudence refused to accept any other theory, and when an accident happened to a workman, he had no recourse against the master unless he could prove a fault on the latter's part.

Seeing that the courts would not interpret the code so as to give the workman a better protection than that which may derive from the fault, the legislator, in 1898, decided to inscribe in the code the principle of the *risque professionnel*, the same as Germany, England and other countries had already done.

In England, the ideas of equity and justice which in France were openly undermining the principle of the *faute délictuelle* in cases of accidents to workmen, were also making considerable progress amongst jurists. In 1877, Chief Justice Cockburn put it thus in a leading case, (Woodley vs Metrop. District Railway): "Morally " speaking those who employ men on dangerous work " without doing all in their power to obviate the danger, " are highly reprehensible, as I certainly think the com- " pany were in the present instance The workman who " depends on his employment for the bread of himself " and his family is thus tempted to incur risks to which, " as a matter of humanity, he ought not to be exposed. " But, looking at the matter in a legal point of view, if a " man, for the sake of the employment, takes it or con-

" tinues in it with a knowledge of its risks, he must " trust to himself to keep clear of injury." (Walton, p. 7).

But in 1891, in Smith vs Baker, Lord Herschell said: " It is quite clear that the contract between employer and " employee involves on the part of the former the duty of " taking reasonable care to provide proper appliances " and to maintain them in a proper condition, and so to " carry on his operations as not to subject those employed " by him to unnecessary risk." (Walton, p. 11).

When Great Britain adopted the principle of the *risque professionnel* in 1897, there existed in England, the same as in France, a tendency in the doctrine and in the jurisprudence, to recognize that the relations which exist between employer and workman are exceptional ones which must be submitted to special rules.

In our own province, as we have seen, civil liability is still based upon the *faute délictuelle* in matters of accidents arising from work, as well as any other cause of damage. However, here, as everywhere else, the new conditions of modern industry have created in the minds of everybody opinions and tendencies which will unfailingly lead us to the transformation which took place in the old countries of Europe.

The theories of the *faute contractuelle* and of the *faute légale* had some effect in our jurisprudence, and if they have not been sanctioned by positive decisions, they have, nevertheless, influenced considerably the application of our theory of the *faute délictuelle.*

We have not as yet accepted the principle of the *risque professionnel*, but our courts endeavour even without legislation to attain the same end. Our law does not enact that the employer is responsible even when he is not in fault, and by the sole fact that he is the employer; but the courts say to the employer, in the judgments which they render against him, not expressly, but at least implicitely: " You are not liable without fault on your part, but seeing that you are an employer we presume you are in fault, or there would have been no accident."

As Professor Walton puts it, is this not putting new wine in old bottles ? We invoke the theory of the *faute délictuelle* but apply the principle of the *faute contractuelle* The bottle bears the lable of the old law ; but contains the tonic of the new.

Thus, in a case, decided in 1883, (Ross *vs* Langlois, M. L. R. 1. Q. B., 280) there had been an accident to a workman while unloading a ship Langlois was helping to unload. An iron hook which was used to support a slide, suddently broke, and in its fall, struck Langlois, hurting him severely. There was no proof as to the condition of the hook prior to the accident. But from the fact that the accident was caused by the breaking of the hook, the Superior Court and the Court of Appeals drew the conclusion that it must have been defective and the owner of the ship was condemned to indemnify the workman.

The same doctrine was sanctioned by the Court of Appeals, in 1886, in Connor and Byrd (M L. R, 2 Q. B., 262). Chief Justice Johnson, whose decision was confirmed in appeal, expressed himself as follows :

" Considering that the result of the proof in the case " is that the defendant met his death in consequence of " breaking of a rope fastened to the stem of the said " vessel, *which could not have broken as it did if it had been fit* " *for the purpose it was used for, and had been properly and* " *skilfully used and that there is no proof of any neglect or* " *carelessness of the part of the said deceased, etc.*"

I find the same doctrine applied by the Court of Review, in Quebec, in 1896, in Dupont *vs* Quebec Steamship Co., (R. J. Q. 11 S. C. 188).

In another case, Durand *vs* The Asbestos & Asbesting Co., the Supreme Court, in 1900 (S. C. R. 30, p. 285) decided that an accident caused by an explosion of dynamite gave rise to responsibility of the employer towards his employees, even though the cause of the explosion was not known. (See with reference to this case, the remarks

of Judges Girouard and Taschereau in McArthur *vs* Dominion Cartridge Co., 31 S. C. R. pp. 399 and 406.)

Is it the system of the *faute contractuelle*, or that of the *faute légale* which was followed by the judges in these cases? Their notes do not say which, but it is quite evident that they served new wine in a bottle bearing the old lable.

Is this wine the product of the vine called *faute contractuelle*, or of that known as the *faute légale?* Let us not concern ourselves with this mystery, but let it suffice to note that the tendency of our jurisprudence is to infuse the blood of new theories in the veins of the old law.

This proclivity of our courts, if I may so say it, towards a professional quasi-liability of the employer, has been established by a large number of judgments. The jurisprudence on this point may be given in two or three axioms:

1. The master is obliged to take all the precautions of a prudent administrator to protect his employees against accidents. Thus, he is liable for damage caused by a defective installation of some machinery, by tools which are out of order, and even by some *latent flaw* in the machinery or the tools. (Is not this responsibility for the latent defects, Mr. Josserand's *responsabilité légale?*)

2. The master is obliged to protect his workmen even against their own errors or imprudence, their inexperience, their want of skill. When a certain work is dangerous, it is not sufficient for the employer to give orders that the work be given up; he is bound to see that his orders are carried out.

3. The fact that the workman knew there was danger, would not exonerate the master.

I will not undertake to cite here all the judgments in which those principles were adopted and sanctioned. It would be sufficient to mention two recent cases: that of

Fournier *dit* Larose *vs* Lamoureux, Court of Review, Quebec, in 1901, and Supreme Court in 1903; and that of McCarthy *vs* The Thomas Davidson Manufacturing Co., Superior Court, in 1899, Court of Appeals, in 1900. The first is reported R. J. Q. 21 S. C. p. 99, and 33 R. S. C. p. 675, and the second will be found in R. J. Q. 18 S. C. p. 272.

The case of McCarthy *vs* The Thomas Davidson Manufacturing Co., has this remarkable feature that, though the judgment is not based expressly upon the theory of the *faute contractuelle* no more than the other decisions of our courts on the same matters, Mr. Justice Lemieux, in delivering the judgment in the Superior Court, speaks at length and in favourable terms in his notes, of the theory of the *faute contractuelle* and of the work published by Mr. Sainctelette on the question.

So, the jurisprudence of our courts extending over a certain number of years, shows that there exists in the province a decided tendency to abandon the principle of the *faute delictuelle*, and adopt a principle more appropriate to the necessities of modern industry, more in harmony with the recent legislation enacted in the old countries of Europe.

It matters little whether the principles which captivates the attention and the conscience of our jurists and of our courts, is called *faute contractuelle*, *faute légale*, or *risque professionnel*. It is none the less true that our jurisprudence rather follows modern ideas and necessities, than the theories of the old law.

However, it remains for me to mention on this point, a decision of the Supreme Court, dated October, 1901, in which the tribunal seemed to upset all the judgments of our courts, and sanction, in all its rigour, the theory of the *faute delictuelle*. This judgment was rendered in McArthur *vs* the Dominion Cartridge Co, (31 S C. R. p. 392), Judge Taschereau dissenting.

There is in this case only a question of proof. But, as we have seen, our courts have never expressly sanctioned any other theory than that of the *faute delictuelle*. Only they took good care to find in the mere fact that an accident had happened, without proof of fault or negligence on the part of the victim, a presumption that there must have been some fault or negligence on the master's part, or some defect in the machinery or in the implement which was the cause of the accident ; and thus, indirectly, they arrived at the same practical conclusion as with the theory of the *faute contractuelle*, of the *faute légale* or that of the *risque professionnel*, that is to say : liability of the master even in the absence of any positive proof of fault on his part. In the above mentioned case of McArthur *vs* The Dominion Cartridge Co., the Supreme Court did away with that presumption of fault on the master's part, and decided that a workman can claim no indemnity from his employer without positive evidence, or without establishing by means of presumption serious, precise and substantial, that his employer was guilty of negligence, and that this negligence was the immediate, necessary and direct cause of the accident. Without the proof of direct fault for the accident, the employer is not liable.

The consequence of this judgment of the Supreme Court has been that actions for damages, in cases of accidents arising from work, are now taken for less than $2,000.00, to avoid the jurisdiction of the Supreme Court, and to submit the case entirely to the tribunals of our province, which refuse to accept and to follow the opinion of the Supreme Court in the matter.

Besides, that is not the only point upon which the courts of our province and the Supreme Court fail to agree, in matters of damages resulting from delicts or quasi-delicts. There exists another considerable divergency between them with reference to the *Solatium doloris*. What is meant by *solatium doloris* is the moral prejudice, or the compensation due to the near relatives of the victim, as a consolation or solace in their grief caused by the workman's sad and untimely death.

The question which came up, and which was resolved differently by the tribunals of this province, and the Supreme Court, was whether the *solatium doloris* was due to the plaintiff in our Civil law.

In France, most of the authors as well as the jurisprudence decided in favour of this doctrine.

In the Province of Quebec, the courts took the same stand though the judges were not unanimously of that opinion. The case which has settled the jurisprudence in that sense is Ravary *vs* The Grand Trunk Railway, Court of Appeals, in 1860 (6 L. C. J. p. 42.)

In this cause, the Court of Appeals was divided, three judges deciding in favour of a *solatium doloris*, and two refusing to sanction such a doctrine The majority was composed of Judges Lafontaine and Aylwin, and Judge Bruneau, acting *ad hoc*, and the dissenting judges were Judges Duval and Badgley.

From 1860, until 1887, the jurisprudence continued on the same lines with the decision of the majority in Appeal in Ravary *vs* Grand Trunk Railway.

But in 1887, the Supreme Court unanimously reversed that jurisprudence in two separate cases, that of Robinson *vs* C. P. R. and that of Labelle *vs* City of Montreal (14 S. C. R. pp. 105 and 741).

Since that date, the family of the victim of an accident is not entitled to claim compensation for moral damage from the party who is liable for the accident, but only real loss and damage.

The Supreme Court in support of its decision falls back upon the fact that the rule enacted by article 1056 of our civil code, which governs in these matters, is derived from English law, and that in England they never grant any compensation as *solatium doloris*.

I must add that in this matter, as well as in that which I have just examined, a large number of our judges refuse to accept the doctrine of the Supreme Court, and continue to express the opinion that the *solatium doloris* is exigible under our law (See Mr Justice Jette's opinion in Joannette & Couillard R J. Q. 3, Q. B. p. 461).

Another embarrassing difficulty which exists in our law as it now stands, is with reference to the amount of damage to which the victim is entittled.

Our law contains no rule to guide the court when it comes to consider the damage done. It is left entirely to the discretion and to the will of judge and jury. Therefore it is very difficult for a lawyer to advise his client with confidence. Certain judges will very readily grant heavy damages, while others will be excessively severe. One must also take into consideration the circumstances, the surroundings, the sympathy, and a thousand and one matters which may influence to a certain extent the mind of judge and jury. It may be that the judges, as a general rule, show themselves more humane than the law in this respect They very often are inspired with considerations quite outside of the question itself, as, for instance, the fortune of the employer, the miserable and lamentable situation of a hard working man, respectable in his rank, and perhaps the father of a large family The decisions vary according to the districts and to the persons, and similar facts give rise to indemnities so widely different as to be quite incomprehensible.

In Conner *vs.* Byrd, above mentioned, Judge Ramsay alludes to the steady increase in the damages awarded by the courts in cases of accidents, and he notes that even at that time, (it was in 1886), there existed a tendency amongst the judges to increase damages. He says: "I "concur entirely with the learned Chief Justice in his "criticism as to the tendency of our days to aggravate "damages. Philantropists are never so charitable as when "spending other people's money." (M. L. R. 2, Q. B. p. 269).

In that case, Mr Justice Johnson had awarded $6,000.00 damages. In appeal, the amount was reduced to $2,500.

Another source of controversy in our province proceeds from the law concerning industrial establishments. This law is to be found in the Statutes of Quebec of 1894; it is the Act 57 Victoria, chapter 30. Its object is to lay down certain rules and regulations for the workshop and factory. It provides amongst other things, for the inspection of factories and boilers, and for certain measures of precaution to avoid accidents.

If the employer violates this law, would he be in fault and liable for all damages which may be caused by his violating the prescriptions of the statute? That is the question which presents itself.

It was brought up and decided in Corcoran *vs.* The Montreal Rolling Mills The Superior Court (Mr. Justice Caron) and a majority of the Court of Appeals (Lacoste and Hall dissenting) held that the employer was liable in that case. It was established that a fly-wheel in the workshop was not protected by safety apparatus as it is enacted by the Quebec Industrial Establishments Act, article 3021; it was held that the accident would not have happened had the law been followed and that, consequently, the employer was responsible. (R. J. Q. 8, Q. B. p. 488).

But the Supreme Court unanimously reversed the judgment of the Court of Appeals, and decided that the Quebec Industrial Establishments Act was simply a police regulation, and could in no manner modify or change the responsibility of the employer towards his employees. (26 S. C. R p. 595, 1896)

The Privy Council, in its turn, has contributed to mix up matters in our jurisprudence concerning the question which we are now looking into. In Roy vs C. P. R., the Judicial Committee of the Privy Council held that a company in the exercice of rights conferred by its charter, is not liable for damages to a third party, unless the com-

pany be in fault. This judgment is contrary to the jurisprudence of our courts, which always held that a company, as well as a private individual was always held responsible for damages caused by it in carrying out its enterprise, if such enterprise was dangerous for third parties. (Law Reports—Appeal cases 1902, p. 220)

The conclusion which naturally follows from what we have seen so far, is that the present state of our law and jurisprudence in matters of accidents to workmen, is far from being satisfactory. Has not the moment arrived for our legislators to follow the example of European countries, and enter into our statutes legislation more in conformity with the conditions of modern industry, and determining precisely the relative responsabilities and rights of masters and workmen ? Such legislation is called for on all sides Mr. Mignault, in his work on Canadian Civil Law, expresses the wish to see the legislator take the matter up. (Vol 5, p. 685). Mr. Walton, the dean of the Law Faculty of McGill University, in a remarkable article published in *La Revue Légale*, new series, Vol. 5, p. 425, discusses the opportuneness of passing a law to do away with the uncertainty which exists in our jurisprudence. The judges freely express from the bench the hope that some legislation will be enacted in this very important matter.

These are the reasons which prompted me to submit to the House, even at this Session, the Bill which is now before you.

I do not intend to examine the Bill in detail. As it has been submitted merely to be thoroughly stutied, in view of its great importance, I will simply add to what I have already said, a few general considerations on the proposed law.

As we have seen, the principle of this law is that of the *risque professionel*.

I will not ask myself if this principle finds its justification in the contract of hire of private service, or in the

provisions of our Code which hold a person responsible for the things he has under his care. It is enough that it be equitable, to make me accept it as the basis of the new law. For, after all, the foundation of all law, is equity.

The new principle of liability is sanctioned by article 15 of the Bill.

As it is worded in that article, it comes to say that, except in the case where the accident was intentionally brought about by the victim, the latter may claim a compensation from the employer.

So, if the accident is due to a fortuitous event, or irresistible force, or to some unknown cause, or even to some fault on the part of the workman who claims, or whose family claims an indemnity, in all these cases the employer is liable.

To my previous remarks concerning the injustices which must necessarily result from the application of the principle of the *faute delictuelle* to accidents arising from work, I wish to add extracts from a report by M. Duché, to the *Chambre des Députés*, in France, 28th November, 1887, on this interesting subject :

" Before we begin the study of the various projects of " reform which have been referred to our committee, let " us see what is the situation which exists and which " must be remedied.

" The right to compensation or indemnity in case of " damage by accident is enacted by article 1382 and " following of the civil code. In its general form, the " law makes no difference between the employees at work " for the undertaking where the accident occured and " any other person. The law gives recourse to both " against the employer for damage suffered. It requires " both the workman as well as the third party to prove " that the head of the concern, either directly or through " some person under his control, is in fault and is the

" cause of the accident. In the absence of such evidence, " the victim of the accident can claim no indemnity, no " compensation. It is very uncommon that outsiders, " strangers to the work, be struck down by an accident " resulting from work, and the workmen are about the " only victims of the casualties which may occur. " Moreover, it is very frequently quite impossible to " procure evidence as to who is in fault. The direct " material cause is very often difficult to establish. The " condition of the surroundings and of the machinery, " which might be the best evidence to furnish towards " that end, in the most serious cases is considerably " modified by the accident itself. The witnesses are often- " times destroyed, or, as a result of the accident, rendered " powerless to testify, and very often their responsibility " being *en cause*, or, being personnally interested in the " issue of the case, they do not say all they may know " So there is a certain number of instances where the " fault of the master, though it exists, cannot be judici- " ally brought home to him. These cases must be added " to the more frequent ones wherein there is no more " trace of direct or personal action on the part of the " master than there is on the part of the workman, " and wherein nevertheless, the injury resulting is " exclusively borne by the latter They are the cases of " fortuitous event and irresistible force; that is, in the " cases where the cause more or less undertermined, must " be looked for in the conditions of industry, in the neces- " sities which arise from the working of machinery or the " manipulation of chemicals, etc. Thus, in most instances, " when an accident happens, the theoretical recourse, " given by article 1382 and following of the civil code, " are without practical result The workman, victim of " the accident, bears under the present law, the whole " weight of the fortuitous event or irresistible force; and " in the same manner, that of the many accidents where " the fault of the employer, though real, cannot be estab- " lished There remains really very few cases where the " workman may hope to obtain compensation.

" Foreign statistics give the following classification of " the causes of accidents: 68 per cent, fortuitous event

" and irresistible force; 12 per cent., due to fault of " employer; 20 per cent., due to fault of the workman. " We know of no such statistics in France; but there is no " doubt that in most instances, the dispositions of articles " 1382 and following of the civil code give no recourse to " the victim of an accident arising from work ".

M. Duché refers to accidents in which the workman cannot prove negligence on the part of employer These accidents are commonly called *accidents anonymes*.

I do not know for which country Mr. Duché's statistics were made, but similar statistics were compiled in Germany, in 1887, and they show that during the preceding year, 1886, out of 15,910 serious accidents, involving incapacity for work for at least three months there were :

3156, or 19 per cent. due to fault of employer ;

4,094, or 25 per cent due to fault of victim ;

711, or 4 per cent. due to fault of doth ;

524, or 3 per cent, due to fault of fellow workman on third party ;

6,931, or 43 per cent, due to fortuitous event or irresistible force, due to risks which were incident to the employment and in fact unavoidable ;

554, or 3 per cent. due to unknown cause.

Calculations made in Belgium confirm these figures, compiled in Germany. M. Harzé (See Stocquart, " Contrat de Travail " p. 101 estimates that out of a hundred accidents to workmen, seventy five give no claim to legal reparation, if the theory of the *faute delictuelle* is applied.

In Switzerland it was reckoned that only from 12 to 20 per cent. of accidents were due to fault of employer.

M Duché goes on:

"If however, an action is taken, the injured workman, "or, in case of death, his heirs, his widow and children, "find themselves fettered by the delays of law proceedings..... When judgment is finally reached, he is in "most instances the object of criticism more or less "justified The amount of damages awarded vary infinitely in circumstances which appear analogous. The "judges, finding no rule in the law, appreciate very "differently the damage and loss. At times they take "into consideration, circumstances which are entirely out "of the question, such as the fortune of the employer, or "the benefits he is supposed to make in the enterprise. "Their measure varies with the regions, and the same "facts give rise to indemnities which run from small "amounts to tenfold, according to the tribunal which "decides the question. In view of the difficulty, and at "times, the impossibility to fix legally the liability upon "one or the other party, in many cases the judge divides "the loss equally between the two parties. The jurisprudence has thus created a mixed liability, half to the "workman, and half to the employer, and this has had "for effect to reduce by half the indemnity to the victim, "in case of accident Moreover, the expensive procedure, "the loss of time which cannot be avoided in a lawsuit, "makes it all the heavier for the employer to settle claims "for an indemnity which is itself awarded with difficulty "today that a lawsuit seems to be the necessary sequence "of every serious accident. The relations between "employers and workmen, it will be readily understood, "have not been made more cordial by this state of "affairs. And, again, the difficiencies which exists in "the law under present conditions, as a question of justice "and of social and economic solidarity, have long since "been the object of the attention of reformers."

"On all hands, it is acknowledged that the remedy "afforded by the civil code in matters of compensation "for accidents to workmen, is no longer adequate under "existing conditions of modern industry. The transformation which has been operated in industry since

" the beginning of the century and which goes on deve-
" loping before our eyes, has created special conditions of
" mechanical productions, and the dangers which the
" workmen are exposed to, are, as it were, necessitated by
" the nature of the work. The rules that were sufficient
" when the artisan or workman was master of his tools,
" have become under the regime of large industries, more
" and more inefficacious to forward the ends of justice.
" This has long since been acknowledged by all "

M. Cheysson, engineer, in his turn, wrote as follows in the " Journal des Economistes," 15th March, 1888:

" The *risque professionnel* is the risk which is inherent
" in any given trade or profession without any question
" of fault on the part of master or workman. Notwith-
" standing the precautions taken, accidents will happen,
" and in most cases, they cannot be attributed to a fault.
" It is by means of a charitable fiction that the court con-
" trives to find a fault, and even to create one when there
" exists none, in order to indemnify the victims. Since
" the industry necessitates risks which are unavoidable,
" the workman cannot and must not be made to bear
" them, in view of modern machinery and the force by
" which it is moved.

" When the track-layer handles his pick or spade, the
" woodcutter his axe, the implement in his hands is a
" lengthening of his own limbs, and we admit that he
" may be responsible for them.

" But how different it is when he has to deal at close
" quarters with complicated machines, furnaces, boilers,
" cylinders, when he has to handle molten metal, irresis-
" tible forces, whose least touch is fatal.

" The workman has no longer the choice of his imple-
" ments, they are imposed upon him. It is the employer
" who must bear the responsibility for the machine that
" injures and kills; the machine is his; should he not be
" held responsible for it, and provide for the *risque profes-*
" *sionnel* in the cost of the work?"

(The above are extracts from " Lois Annotées ", Sirey, 1899, p. 762 and 763.

I thought I should bring up this matter once more, and cite at length the extracts which I have just read, and the fine juridical language of which is so attractive, because I wish to demonstrate that the principle which is introduced in the proposed legislation, the principle of the *risque professionnel*, imposes itself to our attention, and we can ignore it no longer.

As to the other provisions of the Bill, they are details which may be modified and altered as much as we please. What is essential is that the principle be recognized and adopted

However, I must say a few words about the details of the measure, in which is applied the fundamental principle of liability, that of the *risque professionnel.*

The employer is responsible for the accidents arising from work. Does this liability exist in every case of accident?

We must answer in the affirmative, as a general rule There is but one exception : it is the case where the accident was caused intentionally by the victim.

The English law holds the employer responsible, except when the accident is due to " serious and wilful misconduct " on the part of the workman. The French law declares him liable except when the victim intentionnally caused the accident. It is the same rule as that of the proposed legislation.

If the accident, instead of being caused wilfully by the victim, was intentionally brought about by the employer, the latter remains subject to the general rules of civil responsibility and he cannot claim the benefit of the provisions of the proposed Act. As we shall see in a moment, if the new legislation imposes liability upon the master in case where he would go free under the

existing law, there are other sections in the same law which are to his advantage.

Outside of the case where the victim intentionally causes the accident, the employer is always held responsible.

Therefore, he will be liable even when the accident, though not caused intentionnally by the workman, was nevertheless due to some faul' of his.

This disposition is, of all the innovations to be found in the new law, the one which has been the most severely criticized.

It has, nevertheless, been adopted in every legislation which has sanctioned the principle of the *risque professionnel*. Otherwise, the protection which the law intends to afford to the workman, would be incomplete and illusory.

An imprudence is quite inevitable in modern industry. The repetition of the same motions, of the same work, the looking after the same machinery, causes a remissness, a familiarity with danger. The slightest careless move, made without precision, is frequently the cause of a catastrophy. Is it a fault ? It is, in the strict meaning of the word ; it is not, if we take into account the real condition of things.

Besides, we must not lose sight of the fact that the theory of the *risque professionnel* has nothing whatever to do with the question of fault. The master is liable outside of any question of fault. He is responsible in his capacity as employer and head of the concern, and as such he is obliged to assume the risks of the running of his establishment, the same as he is entitled to the profits which it may bring him. He must provide in his calculations for the accidents which may befall his employees, even through their negligence, even through their fault, the same as he protects himself against all risk of loss by fire, and for the wear and tear of his buildings and material.

The *risque professionnel* once admitted, gives rise to an abstract personality between the employer and workman, the industry itself, and makes this abstract personality responsible for the consequences of the accident. It is not really the employer, himself, who bears the loss, it is the industry itself. I repeat it, the *risque professionnel* is a charge upon the undertaking, it is inherent in the business.

However, when the accident was caused by an inexcusable fault on the part of the workman, the court may decrease the compensation, instead of awarding the amount fixed by the law. (s. 15).

It is the same should the accident be due to an inexcusable fault on the part of the employer, the amount allotted by the law, may be increased by the tribunal. (s. 15).

In any case, should that dispostion of the Bill, holding the employer responsible even when the workman is in fault, be considered too onerous and too severe for the master, it might easily be struck out. Even if the law is applied only in cases of *accidents anonymes*, that is to say, in a majority of the accidents arising from work, it would still prove to be a boon to the workingman, and a great relief to the conscience of the legislator.

Let us now consider briefly, in what manner the proposed law regulates regarding the compensation for damages from accidents arising from work or in connection with work.

The indemnity varies according to whether the casualty is fatal or not.

If the victim dies, an annuity is allowed to his widow, to his children under sixteen years of age, and to his ascendents whose sole support he was at the time of the accident.

Should the victim leave no widow nor children, nor ascendents, no compensation is due.

When, on the other hand, the accident has not caused the death of the workingman, it must be ascertained whether the accident has occasioned temporary or permanent incapacity.

If the incapacity is permanent, the victim is entitled to an amount representing the value of an annuity at the age attained by the victim at the time of the accident.

If, on the contrary, the incapacity is temporary, total or partial, the victim is entitled only to a daily compensation.

The amount of the indemnity in case of permanent and total incapacity, or in case of death, is fixed at sixty per cent, of the victim's average wages during the year preceding the accident, providing the same wages do not exceed $500.00. If the yearly earnings exceed that amount, he shall be entitled to one fourth only of the excess. Thus, if the wages are $900.00 they will be taken as being $600 00, and the victim will be entitled to an annuity of sixty per cent of that amount, or $360.00 per annum.

This amount of compensation is about the same as that allowed in the countries where the principle of the *risque professionnel* is admitted. In Germany, they allow 66⅔ per cent.; in Austria, 60 per cent.; in Norway, 60 per cent.; in Finland, 60 per cent.; in England 50 per cent.; in France, 66⅔ per cent.; in Holland, 70 per cent.; (See Bulletin of Labor of Washington).

Here again, other figures may be fixed, if the one which is provided for in the Bill is not considered just and fair.

The law contains certain provisions to secure the payment of the compensation which is allowed. It is unnecessary for me to make a study of these provisions.

There remains out one last remark to make concerning this Bill, and that is to say that it applies only to those who are at the head of industrial undertakings, and to accidents arising from work or in connection with work. It must concern a dangerous industrial undertaking, workmen employed at the undertaking and an accident which has happened during the work in the execution of the enterprise.

All these questions would call for a lengthy explanation. But my intention is simply to confine myself to the principle of the legislation which is proposed ; so I shall dispense with any other comments upon the different clauses of the Bill.

As you may have noticed by my rapid analasis of the clauses of the Bill relative to the indemnities which the employer may be liable to pay, they have a double character which gives them a superiority over the existing law : they are absolutely fixed by the law, in the nature of a compromise. They are fixed by law at a rate that is certain. The amount to be allotted may be ascertained very simply and at very small expense. The employer will be much relieved by that disposition of the law. The present law is very uncertain, as we have seen. Every judge has his own opinion as to the evidence necessary to establish fault. And both judges and juries give damages which vary so much that an employer who is threatened with an action can hardly calculate how much he ought to offer, if he is willing to compromise.

Moreover, in fixing the amount of the compensation due, the law allows the employer to protect his interests by means of insurance, and the premiums will thus be very easily calculated.

The indemnities which are allowed by the proposed Bill are also by way of a compromise, that is to say that if they are borne by the employer in almost every case, they never attain the full amount of the loss incurred, and the employer is liable for no other damage than that

which is fixed by law. And even in the case where the master is liable, while he would not have been upon the old theory of the *faute delictuelle*, is his position so very much aggravated? At present, as we have seen, the law holds the master responsible only when he is in fault. But the courts do so much violence to the theory of the code, that the employer is always presumed to be in fault unless he can prove that there has been some fault on the part of the victim. And even when he succeeds in making such proof, and in getting the action brought against him dismissed, is it not by ample compensation to his lawyer that he obtains a judgment establishing his non-liability for a compensation to the victim?

I conclude by saying that the proposed legislation is, not only a fair and just acknowledgement of the situation which the workman is placed in by the dangers of modern industry, but it is also an immense improvement for the employer himself. I know that this Bill is viewed with suspicion by the manufacturers and by those who are at the head of our industrial establishments; but I feel sure that when it will have been thoroughly studied and well understood, it will be supported and asked for by all classes of society. In England, it was Mr. Chamberland, one of the largest manufacturers in the United Kingdom, who succeeded, through his influence and protection, in carrying the Bill through the House of Commons. It was also adopted by the House of Lords, which is considered, and justly, as being the body the most jealous of the conservation of English traditions, of the protection which is due to the large industrial interests of the British nation, and which is the most reluctant to accept innovations. Nearly all the countries of Europe have sanctioned the principle of the *risque professionel* in accidents arising from work. This is sufficient for me not to fear that any one will accuse me of attempting to introduce revolutionary and socialistic legislation, and I leave my case with confidence in the hands of this House, and to my fellow-citizens, exclaiming with Dr. Walton: "No "legislation of greater importance has been passed during "this generation. It affects the security and happiness of "millions of working-men and working women, and

" other millions of old parents, of widows and of young " children whose bread-winner has been removed from " them by a fatal accident ".

Let us remain no longer the defenders of a law which may have met the wants and requirements of the social status for which it was enacted, but which is no longer in touch with the responsability borne by the conscience of modern civilisation. Let us hasten to insert in our legislation the unchangeable rules of christian charity, and whilst having due regard for the glories of the past, let us inhale the self denying atmosphere of the generous age in which we are living, and bend our souls towards the inspiriting fount of justice and equity.

# BILL

An Act respecting compensation for damages resulting from accidents to workmen

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

SECTION I

COMPENSATION

**1.** Accidents arising from work or in connection with work to workmen, apprentices, foremen, engineers, managers and any employees whomsoever engaged in building operations; in workshops, factories, works, ship-yards, stone, lumber or coal-yards; in transportation by land or water; in loading or unloading; in gas or electric-works; in the construction, repair or maintenance of railways or tramways, water-works, sewers, canals, dykes, wharves, docks, elevators, bridges, by-roads and roads; in warehouses, mines, diggings, quarries, and also in all undertakings or parts of undertakings in which explosive substances are made or used or in which machinery is used that is driven by any power other than by man or by animals, entitle the victim or his representatives to compensation determined in accordance with the following provisions.

**2.** In the cases provided by articles 1 of this act, the victim is entitled:

(*a*) If the accident has occasioned temporary and total incapacity for work for more than four days, to a daily compensation, counting from the fifth day equal to sixty per cent, of the daily wages received by the victim at the time of the accident;

(*b*) If the temporary incapacity be or become partial only, to a daily compensation equal to sixty per cent of the difference between the daily wages received by the

victim at the time of the accident and those he is able to earn before being completely cured;

(*c*) If the incapacity be or become permanent, to an amount representing the value of an annuity of the age attained by the victim at the time of the accident, of sixty per cent. of the victim's average yearly wages, determined according to the degree of infirmity, in accordance with the foregoing provisions; such annuity replaces the above temporary allowance counting from the day whereon the permanent nature of the incapacity is determined either by agreement between the parties or by the final judgment.

**3.** 1. When the accident has caused the death of the victim, either before or after the compensation or annuity provided in article 2 is established, the following compensations are allowed:

(*a*) A sum not exceeding $25.00 for the funeral which shall, as far as possible, be in accordance with local custom, taking into account the victim's rank in life and his religious belief;

(*b*) To the widow, who was not either separated from bed and board or divorced, a sum representing the value of an annuity constituted in her favour equal to twenty per cent. of the victim's average yearly wages;

(*c*) To the legitimate or acknowledged natural children, under sixteen years of age at the time of the victim's death, and to the ascendents whose sole support the victim was at the same time, a sum representing the value, for each child, of an annuity up to the age of 16 years of fifteen per cent. of the victim's average yearly wages, and for each ascendent an annuity of the same amount; the aggretate amount of such annuities shall not, however, exceed sixty per cent. of such wages, if the children be fatherless and motherless, and forty-five per cent if they be either fatherless or motherless. In the event of concurrence between several representatives the compensation of each shall be proportionately reduced.

2. In determining the value of any annuity payable in case of death, under the provisions of this article, the

ordinary expectation of life of the victim as ascertained from mortality tables must be taken as fixing the number of years during which such annuity is payable.

3. Consorts and naturel children are entitled to the annuity only when the marriage or acknowiedgment has preceded the accident.

4. The victim's legal representatives, whose ordinary residence is not within the territory of the province at the time of the accident, shall not be entitled to claim the benefit of the act unless the inhabitants of the Province of Quebec enjoy similar advantages, without the conditions of residence, in the place where such persons usally reside.

**4.** The wages serving as a basis for fixing the compensation in the case of death or in the case of permanent incapacity for work, mean, with regard to a victim engaged in the undertaking during the year preceding the accident, the effective remuneration allowed him during such time, either in money or in kind.

With regard to victims engaged in the undertaking for less than twelve months prior to the accident, the wages mean the effective remuneration they have received with the addition of the average remuneration received by workmen of the same class during the period required to complete the twelve months; and, if there be no such workmen in the same undertaking, by the workmen of the same class in similar undertakings.

When the undertaking covers a period of less than a year, the amount of yearly wages is calculated according to both the remuneration received during the working period and to the earnings of the workman during the remainder of the year.

If the yearly earnings exceed $500.00, they shall be taken into consideration only to the extent of that sum. The excess above such amount shall entitle to one fourth only of the compensation specified by this act.

**5.** Apprentices, including those who do not receive regular pay or who are not entitled to any wages, shall,

as regards the fixing of the daily or average wages, rank with the workmen receiving the lowest wages in the undertaking.

**6.** The compensation specified in the foregoing articles shall be at the exclusive charge of the employer, who shall not keep back anything from the wages on that account, even with the consent of the person receiving such wages.

**7.** The allowance granted in cases of temporary incapacity are payable at the same date as the wages.

Funeral expenses are payable within one month of the death.

**8.** The compensation payable to the victim in the case of permanent incapacity and that to the consorts and ascendants are annuities established in favor of the persons entitled thereto.

In the case of children, the annuities are temporary and lapse when each one of them attains the age of sixteen years.

**9.** As soon as the permanency of the incapacity is established, or, in the event of the victim's death, within one month from the date of an agreement between the parties interested or, in default of agreement, within one month from the final judgment condemning him, the employer shall pay the principal of the annuities to an insurance company authorized for that purpose by an order of the Lieutenant-Governor in Council.

**10.** The Lieutenant-Governor in Council shall determine the conditions on which the insurance companies shall be accepted which may apply by petition to be authorized to assume the annuities in accordance with the foregoing article; but no company shall be so authorized, unless it has previously deposited with the federal or with the provincial government under an act of Canada or of this province, an amount deemed sufficient to secure

the fulfilment of its obligations. (See R. S. C, c. 142 and amendments; 59 V., (Q), c. 34).

**11.** Instalments of annuities are payable monthly and by twelfths in the offices of the insurance companies.

**12.** An agreement may be entered into between the employer and the interested parties of the full age of majority and in the exercise of their rights to the effect that the principal sum required for constituting the annuity shall be paid them at once in cash either wholly or in part only.

**13.** Compensations payable under this act to the victims of accidents or to their representatives cannot be assigned, and are subjet to the provisions of paragraph 11 of article 599 of the Code of Civil Procedure.

Poupart vs. Miller, R. J. Q, 10 S. C., 137. *Contra*, Beauvais vs. Leroux, M. L. R., 2 S. C., 491; Cressé vs. Young, 18 R. L, 186.

SECTION II

RESPONSIBILITY

**14.** No derogation from the general rules of civil responsibility exists when the accident has been intentionally brought about by the employer

With this exception, damages resulting from accidents arising from or in connection with work in the cases provided for by article 1 of this act entitle the victim or his representatives to claim from the enployer the compensation set forth in this act only.

In no case shall damages be cumulated with the amount of such compensation

**15.** The compensation established by this act cannot be claimed when the accident was intentionally brought about by the victim.

When the accident is due to inexcusable fault on the part of the employer or of the victim, the court may

decrease or increase the compensation ; but the latter or the aggregate amount of the compensation allowed shall not be less than one half the daily or yearly wages, as the case may be, nor exceed the total amount of such wages.

**16.** Independently of the action resulting from this act, the victim or his representatives, as set forth in article 1056 of the Civil Code, shall retain the right to claim compensation for the injury done, in accordance with the provisions of the Civil Code, from the authors of the accident other than the employer, his workmen or employees.

The compensation allowed them and which they shall actually receive from that source shall exonerate to that extent the employer from the obligations imposed on him.

Such action against third parties responsible for the accident may also be brought by the employer at his own risk and peril in the place and stead of the victim or his representatives, if the latter neglect to bring such action

**17.** The employer may relieve himself from the obligation to pay to the victim the compensation due in cases of temporary incapacity or from a portion only of such compensation, if he prove :

1. That he had affiliated the victim to a mutual benefit society and had assumed the payment of the assessment exacted therefor ;

2. That the society assures to its members in case of accident a daily compensation.

Nevertheless if the amount of the compensation and the value of the services assured and paid for by the society are less than those to which the victim would have been entitled under this act, the employer is bound to pay him the difference. The employer's obligation continues likewise if the society neglects or becomes unable to pay the compensation or to pay for the services it has assumed, at the times fixed.

**18.** Workmen who usually work alone cannot be made subject to this act through the fact of the casual collaboration of one or more other workmen.

**19.** Every agreement contrary to the provisions of this act is *de jure* null and void.

**20.** The victim is obliged, if the employer require the same in writing, to undergo an examination by a medical practitioner chosen and paid by the employer, and if he refuse to submit to such examination or oppose it in any way, his right to compensation as well as all recourse for obtaining the same remain suspended untill the examination has taken place.

SECTION III

SECURITY

**21.** The claim of the victim of the accident or his representatives with respect to funeral expenses, as well as to the compensation allowed in consequence of temporary incapacity, is secured by privilege on the moveable and immoveable property of the employer, ranking concurrently with the claim mentioned in paragraph 9 of article 1994 and paragraph 9 of article 2009 of the Civil Code, respectively.

The payment of the compensation for permanent incapacity or for an accident followed by death is secured by a privilege of the same nature and rank, so long as the amount required to constitute the annuity has not been handed to an insurance company or otherwise paid under this act.

SECTION IV

JURISDICTION AND PROCEDURE

**22.** The Circuit Court takes cognizance in final resort, to the exclusion of every other court and without any evocation to any other court, of all claims and contestations between the victims of accidents or their representatives and the employers, with respect to funeral expenses, as well as to the compensation allowed in consequence of temporary incapacity, whatever may be the amount of the claim.

**23.** The Superior Court takes cognizance of all claims and contestations arising under this act, which are not declared by the foregoing article to be within the jurisdiction of the Circuit Court.

**24.** The provisions contained in articles 1150 to 1162, inclusively, of the Code of Civil Procedure, respecting summary matters other than those between lessors and lessees, apply to all such claims and contestations, as well as to the incidents of procedure and to the execution of the judgments to which they give rise.

**25.** The court or judge may, at any stage of the proceedings before judgment, grant on petition an interim daily allowance to the victim or his legal representatives. The judgment or order granting such allowance is executed notwithstanding review or appeal in cases where such recourse lies.

**26.** Judgments rendered by the Superior Court in virtue of this act are susceptible of review or appeal under the rules of common law. The appeal must however be taken within fifteen days from the date of the judgment on pain of forfeiture.

**27.** Provisional execution may be ordered, notwithstanding review or appeal, with or without security, at the request of the victim or of his representatives, in accordance with the provisions of articles 595 to 597 of the Code of Civil Procedure.

**28.** Suits for the recovery of compensation and other allowances provided for by this act are prescribed in one year.

**29.** A demand for the revision of the compensation founded on an aggravation of or improvement in the victim's condition, may be brought within four years from the date of the agreement between the parties or of the final judgment.

SECTION V

FISCAL PROVISIONS

**30.** All judicial proceedings under this act are exempt from the duties and taxes enacted by Order in Council, No. 180, of the 27th March, 1902.

SECTION VI

COMING INTO FORCE

**31.** This act shall come into force on the day of its sanction.

## WORKMEN'S COMPENSATION ACT, 1897

[60 and 61 Vict , ch. 37.]

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment. [6th August 1897 ]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that :—

(*a*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed ;

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act ; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid ;

(c.) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this subsection when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

**2.**—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or if there

be more than one office, any one of the offices of such body.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged by the employer

and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

4.—Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workmen employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5.—(1.) Where an employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the

amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangem·nt with his creditors, or if the employer is a company of th· company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

**6.**—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

**7.**—(1.) This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on or in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this act—

"Railway" means the railway of any railway com-

pany to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896;

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891 and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies:

"Quarry" means a quarry under the Quarries Act, 1894:

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manuel labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise,

and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable :

" Dependants " means—

(*a*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependant upon the earning of the workman at the time of his death ; and

(*b*.) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependant upon the earnings of the workman at the time of his death.

(3) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

**8.**—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

**9.**—Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue

after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

**10.**—(1.) This Act shall come into operation on the first day of July, one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

# SCHEDULES

## FIRST SCHEDULE

### SCALE AND CONDITION OF COMPENSATION

*Scale*

(1.) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependant upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer ;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependant upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants ; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds.

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employers, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident, and the average amount which he is able to earn after the accident, and to any payment not being wages he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster General as a deposit in the name of the Registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Teasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings bank, or of two accounts in the same savings bank.

(11) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practioner, or is dissatisfied by the certificate of such practioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to

the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

## SECOND SCHEDULE

### ARBITRATION

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1.) If any committee, representative of an employer and his workmen exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes at this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act ; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal ; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8 ) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator or by any party interested to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such

memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in or by to or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occured, without prejudice to any transfer in manner provided by rules of court.

(10) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on,

or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland—

(*a.*) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court;"

(*b.*) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral;

(*c.*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and deter-

mine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge," shall include the recorder of any city or town.

# LOI

concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail, du 9 avril 1898.

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*Titre I.*—INDEMNITÉS EN CAS D'ACCIDENTS

**1.** Les accidents survenus par le fait du travail, ou à l'occasion du travail, aux ouvriers et employés occupés dans l'industrie du bâtiment, les usines, manufactures, chantiers, les entreprises de transport par terre et par eau, de chargement et de déchargement, les magasins publics, mines, minières, carrières et, en outre, dans toute exploitation ou partie d'exploitation dans laquelle sont fabriquées ou mises en œuvre des matières explosives, ou dans laquelle il est fait usage d'une machine mue par une force autre que celle de l'homme ou des animaux, donnent droit, au profit de la victime ou de ses représentants, à une indemnité à la charge du chef d'entreprise, à la condition que l'interruption du travail ait duré plus de quatre jours.

Les ouvriers qui travaillent seuls d'ordinaire ne pourront être assujettis à la présente loi par le fait de la collaboration accidentelle d'un ou de plusieurs de leurs camarades.

**2.** Les ouvriers et employés désignés à l'article précédent ne peuvent se prévaloir, à raison des accidents dont ils sont victimes dans leur travail, d'aucunes dispositions autres que celle de la présente loi.

Ceux dont le salaire annuel dépasse deux mille quatre cents francs (2,400 fr.) ne bénéficient de ces dispositions que jusqu'à concurrence de cette somme. Pour le surplus, il n'en droit qu'au quart des rentes ou indemnités stipulés à l'article 3, à moins de conventions contraires quant au chiffre de la quotité.

3. Dans les cas prévus à l'article 1, l'ouvrier ou l'employé a droit :

Pour l'incapacité absolue et permanente, à une rente égale aux deux tiers de son salaire annuel ;

Pour l'incapacité partielle et permanente, à une rente égale à la moitié de la réduction que l'accident aura fait subir au salaire ;

Pour l'incapacité temporaire, à une indemnité journalière égale à la moitié du salaire touché au moment de l'accident, si l'incapacité de travail a duré plus de quatre jours et à partir du cinquième jour.

Lorsque l'accident est suivi de mort, une pension est servie aux personnes ci-après désignées, à partir du décès, dans les conditions suivantes :

(*a*) Une rente viagère égale à 20 p. 100 du salaire annuel de la victime pour le conjoint survivant non divorcé ou séparé de corps, à la condition que le mariage ait été contracté antérieurement à l'accident. En cas de nouveau mariage, le conjoint cesse d'avoir droit à la rente mentionnée ci-dessus ; il lui sera alloué dans ce cas, le triple de cette rente à titre d'indemnité totale.

(*b*) Pour les enfants, légitimes ou naturels, reconnus avant l'accident, orphelins de père ou de mère, âgés de moins de seize ans, une rente calculée sur le salaire annuel de la victime à raison de 15 p. 100 de ce salaire s'il n'y a qu'un enfant, de 25 p. 100 s'il y en a deux, de 35 p. 100 s'il y en a trois, et 40 p. 100 s'il y en quatre ou un plus grand nombre.

Pour les enfants, orphelins de père et de mère, la rente est portée pour chacun d'eux à 20 p. 100 du salaire.

L'ensemble de ces rentes ne peut, dans le premier cas, dépasser 40 p. 100 du salaire ni 60 p. 100 dans le second.

(*c*) Si la victime n'a ni conjoint ni enfant dans les termes des paragraphes *a* et *b*, chacun des ascendants et descendants qui était à sa charge recevra une rente viagère pour les ascendants et payable jusqu'à seize ans pour les descendants. Cette rente sera égale à 10 p. 100 du salaire

annuel de la victime, sans que le montant total des rentes ainsi allouées puisse dépasser 30 p. 100.

Chacune des rentes prévues par le paragraphe *c* est, le cas échéant, réduite proportionnellement

Les rentes constituées en vertu de la présente loi sont payables par trimestre ; elles sont incessibles et insaisissables.

Les ouvriers étrangers, victimes d'accidents qui cesseront de résider sur le territoire français recevront, pour toute indemnité un capital égal à trois fois la rente qui leur avait été allouée.

Les représentants d'un ouvrier étranger ne recevront aucune indemnité si, au moment de l'accident, ils ne résidaient pas sur le territoire français.

**4.** Le chef d'entreprise supporte en outre les frais médicaux et pharmaceutiques et les frais funéraires Ces derniers sont évalués à la somme de cent francs (100 fr.) au maximum.

Quant aux frais médicaux et pharmaceutiques, si la victime a fait choix elle-même de son médecin, le chef d'entreprise ne peut être tenu que jusqu'à concurrence de la somme fixée par le juge de paix du canton, conformément aux tarifs adoptés dans chaque département pour l'assistance médicale gratuite.

**5.** Les chefs d'entreprise peuvent se décharger pendant les trente, soixante ou quatre-vingt-dix premiers jours à partir de l'accident, de l'obligation de payer aux victimes les frais de maladie et l'indemnité temporaire, ou une partie seulement de cette indemnité, comme il est spécifié ci-après, s'ils justifient :

1o. Qu'ils ont affilié leurs ouvriers à des sociétés de secours mutuels et pris à leur charge une quote-part de la cotisation qui aura été déterminée d'un commun accord, et en se conformant aux statuts-type approuvés par le ministre compétent, mais qui ne devra pas être inférieure au tiers de cette cotisation ;

2o. Que ces sociétés assurent à leurs membres, en cas de blessures, pendant trente, soixante ou quatre-vingt dix jours, les soins médicaux et pharmaceutiques et une indemnité journalière.

Si l'indemnité journalière servie par la société est inférieure à la moitié du salaire quotidien de la victime, le chef d'entreprise est tenu de lui verser la différence.

**6.** Les exploitants des mines, minières et carrières, peuvent se décharger des frais et indemnités mentionnés à l'article précédent moyennant une subvention annuelle versée aux caisses ou sociétés de secours constituées dans ces entreprises en vertu de la loi du 29 juin 1894.

Le montant et les conditions de cette subvention devront être acceptés par la société et approuvés par le ministre des travaux publics.

Ces deux dispositions seront applicables à tous autres chefs d'industrie qui auront créé en faveur de leurs ouvriers des caisses particulières de secours en conformité du titre III de la loi du 29 juin 1894. L'approbation prévue ci-dessus sera, en ce qui les concerne, donnée par le ministre du commerce et de l'industrie.

**7.** Indépendamment de l'action résultant de la présente loi, la victime ou ses représentants conservent, contre les auteurs de l'accident autres que le patron ou ses ouvriers et préposés, le droit de réclamer la réparation du préjudice causé, conformément aux règles du droit commun.

L'indemnité qui leur sera allouée exonérera à due concurrence le chef d'entreprise des obligations mises à sa charge.

Cette action contre les tiers responsables pourra même être exercée par le chef d'entreprise, à ses risques et périls, au lieu et place de la victime ou de ses ayants droit, si ceux-ci négligent d'en faire usage.

**8.** Le salaire qui servira de base à la fixation de l'indemnité allouée à l'ouvrier âgé de moins de seize ans ou à l'apprenti victime d'un accident ne sera pas inférieur

au salaire le plus bas des ouvriers valides de la même catégorie occupés dans l'entreprise.

Toutefois, dans le cas d'incapacité temporaire, l'indemnité de l'ouvrier âgé de moins de seize ans ne pourra pas dépasser le montant de son salaire.

**9.** Lors du règlement définitif de la rente viagère, après le délai de revision prévu à l'article 19, la victime peut demander que le quart au plus du capital nécessaire à l'établissement de cette rente, calculé d'après les tarifs dressés pour les victimes d'accidents par la caisse des retraites pour la vieillesse, lui soit attribué en espèces.

Elle peut aussi demander que ce capital, ou ce capital réduit du quart au plus comme il vient d'être dit, serve à constituer sur sa tête une rente viagère réversible, pour moitié au plus, sur la tête de son conjoint. Dans ce cas, la rente viagère sera diminuée de façon qu'il ne résulte de la réversibilité aucune augmentation de charge pour le chef d'entreprise.

Le tribunal, en chambre du conseil, statuera sur ces demandes.

**10.** Le salaire servant de base à la fixation des rentes s'entend, pour l'ouvrier occupé dans l'entreprise pendant les douze mois écoulés avant l'accident, de la rémunération effective qui lui a été allouée pendant ce temps, soit en argent, soit en nature

Pour les ouvriers occupés pendant moins de douze mois avant l'accident, il doit s'entendre de la rémunération effective qu'ils ont reçu depuis leur entrée dans l'entreprise, augmenté de la rémunération moyenne qu'ont reçue, pendant la période nécessaire pour compléter les douze mois, les ouvriers de la même catégorie.

Si le travail n'est pas continu, le salaire annuel est calculé tant d'après la rémunération reçue pendant la période d'activité que d'après le gain de l'ouvrier pendant le reste de l'année.

*Titre II.*—DÉCLARATION DES ACCIDENTS ET ENQUÊTE

**11.** Tout accident ayant occasionné une incapacité de travail doit être déclaré, dans les quarante-huit heures, par le chef d'entreprise ou ses préposés, au maire de la commune qui en dresse procès-verbal.

Cette déclaration doit contenir les noms et adresses des témoins de l'accident Il y est joint un certificat de médecin indiquant l'état de la victime, les suites probables de l'accident et l'époque à laquelle il sera possible d'en connaître le résultat définitif.

La même déclaration pourra être faite par la victime ou ses représentants.

Récipissé de la déclaration et du certificat du médecin est remis par le maire au déclarant

Avis de l'accident est donné immédiatement par le maire à l'inspecteur divisionnaire ou départemental du travail ou à l'ingénieur ordinaire des mines chargé de la surveillance de l'entreprise.

L'article 15 de la loi du 2 novembre 1892 et l'article 11 de la loi du 12 juin 1893 cessent d'être applicables dans les cas visés par la présente loi

**12.** Lorsque, d'après le certificat médical, la blessure paraît devoir entraîner la mort ou une incapacité permanente absolue ou partielle de travail, le maire transmet immédiatement copie de la déclaration et le certificat médical au juge de paix du canton ou l'accident s'est produit.

Dans les vingt-quatre heures de la réception de cet avis, le juge de paix procède à une enquête à l'effet de rechercher :

1° La cause, la nature et les circonstances de l'accident ;

2° Les personnes victimes et le lieu où elle se trouvent ;

3° La nature des lésions ;

4° Les ayants droit pouvant, le cas échéant, prétendre à une indemnité ;

5° Le salaire quotidien et le salaire annuel des victimes.

**13.** L'enquête a lieu contradictoirement dans les formes prescrites par les articles 25, 36, 37, 38 et 39 du code de procédure civile, en présence des parties intéressées ou celles-ci convoquées d'urgence par lettre recommandée.

Le juge de paix doit se transporter auprès de la victime de l'accident qui se trouve dans l'impossibilité d'assister à l'enquête.

Lorsque le certificat médical ne lui paraîtra pas suffisant, le juge de paix pourra désigner un médecin pour examiner le blessé.

Il peut aussi commettre un expert pour l'assister dans l'enquête.

Il n'y a pas lieu toutefois, à nomination d'expert dans les entreprises administrativement surveillées, ni dans celles de l'Etat placées sous le contrôle d'un service distinct du service de gestion, ni dans les établissements nationaux où s'effectuent des travaux que la sécurité publique oblige à tenir secrets. Dans ces divers cas, les fonctionnaires chargés de la surveillance ou du contrôle de ces établissements ou entreprises et, en ce qui concerne les exploitations minières, les délégués à la sécurité des ouvriers mineurs, transmettent au juge de paix, pour être joint au procès-verbal d'enquête, un exemplaire de leur rapport.

Sauf les cas d'impossibilité matérielle dûment constatés dans le procès-verbal, l'enquête doit être close dans le plus bref délai et, au plus tard, dans les dix jours à partir de l'accident. Le juge de paix avertit, par lettre recommandée, les parties de la clôture de l'enquête et du dépôt de la minute au greffe, où elles pourront, pendant un délai de cinq jours, en prendre connaissance et s'en faire délivrer une expédition, affranchie du timbre et de l'enregistrement A l'expiration de ce délai de cinq jours, le dossier de l'enquête est transmis au président du tribunal civil de l'arrondissement.

**14.** Sont punis d'une amende de un à quinze francs (1 à 15 fr) les chefs d'industrie ou leurs préposés qui ont contrevenu aux dispositions de l'article 11.

En cas de récidive dans l'année, l'amende peut être élevée de seize à trois cents francs (16 à 300 fr).

L'article 463 du code pénal est applicable aux contraventions prévues par le présent article.

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*Titre* III.—Compétence. Juridictions. Procédure Revision.

**15.** Les contestations entre les victimes d'accidents et les chefs d'entreprise, relatives aux frais funéraires, aux frais de maladie ou aux indemnités temporaires, sont jugées en dernier ressort par le juge de paix du canton où l'accident s'est produit, à quelque chiffre que la demande puisse s'élever.

**16.** En ce qui touche les autres indemnités prévues par la présente loi, le président du tribunal de l'arrondissement convoque, dans les cinq jours à partir de la transmission du dossier, la victime ou ses ayants droit et le chef d'entreprise, qui peut se faire représenter.

S'il y a accord des parties intéressées, l'indemnité est définitivement fixée par l'ordonnance du président qui donne acte de cet accord.

Si l'accord n'a pas lieu, l'affaire est renvoyée devant le tribunal, qui statue comme en matière sommaire, conformément au titre XXIV du livre II du code de procédure civil.

Si la cause n'est pas en état, le tribunal sursoit à statuer et l'indemnité temporaire continuera à être servie jusqu'à la décision définitive.

Le tribunal pourra condamner le chef d'entreprise à payer une provision, sa décision sur ce point sera exécutoire nonobstant appel.

**17.** Les jugements rendus en vertu de la présente loi sont susceptibles d'appel selon les règles du droit commun. Toutefois, l'appel devra être interjeté dans les quinze jours de la date du jugement s'il est contradictoire et, s'il est par défaut, dans la quinzaine à partir du jour où l'opposition ne sera plus recevable.

L'opposition ne sera plus recevable en cas de jugement par défaut contre partie, lorsque le jugement aura été signifié à personne, passé le délai de quinze jours à partir de cette signification.

La cour statuera d'urgence dans le mois de l'acte d'appel. Les parties pourront se pourvoir en cassation.

**18.** L'action en indemnité prévue par la présente loi se prescrit par un an à dater du jour de l'accident

**19.** La demande en revision de l'indemnité fondée sur une aggravation ou une atténuation de l'infirmité de la victime ou son décès par suite des conséquences de l'accident est ouverte pendant trois ans à dater de l'accord intervenu entre les parties ou de la décision définitive.

Le titre de pension n'est remis à la victime qu'à l'expiration des trois ans.

**20.** Aucune des indemnités déterminées par la présente loi ne peut être attribuée à la victime qui a intentionnellement provoqué l'accident.

Le tribunal a le droit, s'il est prouvé que l'accident est dû à une faute inexcusable de l'ouvrier, de diminuer la pension fixée au titre Ier.

Lorsqu'il est prouvé que l'accident est dû à une faute inexcusable du patron ou de ceux qu'il s'est substitué dans la direction, l'indemnité pourra être majorée, mais sans que la rente ou le total des rentes alloués puisse dépasser soit la réduction soit le montant du salaire annuel,

**21.** Les parties peuvent toujours, après détermination du chiffre de l'indemnité due à la victime de l'accident, décider que le service de la pension sera suspendu et rempla-

cé, tant que l'accord subsistera, par tout autre mode de réparation.

Sauf dans le cas prévu à l'article 3, paragraphe A, la pension ne pourra être remplacée par le paiement d'un capital que si elle n'est pas supérieure à 100 fr.

**22.** Le bénéfice de l'assistance judiciaire est accordé de plein droit, sur le visa du procureur de la République, à la victime de l'accident ou à ses ayants droit, devant le tribunal.

A cet effet, le président du tribunal adresse au procureur de la République dans les trois jours de la comparution des parties prévue par l'article 16, un extrait de son procès-verbal de non-conciliation ; il y joint les pièces de l'affaire.

Le procureur de la République procède comme il est prescrit à l'article 13 (paragraphe 2 et suivants) de la loi du 22 janvier 1851.

Le bénéfice de l'assistance judiciaire s'étend de plein droit aux instances devant le juge de paix, à tous les actes d'exécution mobilière et immobilière et à toute contestation incidente à l'exécution des décisions judiciaires.

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## *Titre* IV.—Garanties.

**23.** La créance de la victime de l'accident ou de ses ayants droit relative aux frais médicaux, pharmaceutiques et funéraires ainsi qu'aux indemnités allouées à la suite de l'incapacité temporaire de travail, est garantie par le privilège de l'article 2101 du code civil et y sera inscrite sous le No 6.

Le payement des indemnités pour incapacité permanante de travail ou accidents suivis de mort est garanti conformément aux dispositions des articles suivants.

**24.** A défaut, soit par les chefs d'entreprise débiteurs, soit par les sociétés d'assurances à primes fixes ou mu-

tuelles, ou les syndicats de garantie liant solidairement tous leurs adhérents, de s'acquitter, au moment de leur exigibilité, des indemnités mises à leur charge à la suite d'accidents ayant entraîné la mort ou une incapacité permanente de travail, le payement en sera assuré aux intéressés par les soins de la caisse nationale des retraites pour la vieillesse, au moyen d'un fonds spécial de garantie constitué comme il va être dit et dont la gestion sera confiée à la dite caisse.

**25.** Pour la constitution du fonds spécial de garantie, il sera ajouté au principal de la contribution des patentes des industriels visés par l'article 1er, quatre centimes (0 fr. 04) additionnels. Il sera perçu sur les mines une taxe de cinq centimes (0 fr. 05) par hectare concédé

Ces taxes pourront, suivant les besoins, être majorées ou réduites par la loi de finances.

**26.** La caisse nationale des retraites exercera un recours contre les chefs d'entreprise débiteurs, pour le compte desquels des sommes auront été payées par elle, conformément aux dispositions qui précèdent.

En cas d'assurance du chef d'entreprise, elle jouira, pour le remboursement de ses avances, du privilège de l'article 2102 du code civil sur l'indemnité due par l'assureur et n'aura plus de recours contre le chef d'entreprise.

Un règlement d'administration publique déterminera les conditions d'organisation et de fonctionnement du service conféré par les dispositions précédentes à la caisse nationale des retraites et, notamment, les formes du recours à exercer contre les chefs d'entreprise débiteurs ou les sociétés d'assurances et les syndicats de garantie, ainsi que les conditions dans lesquelles les victimes d'accidents ou leurs ayants droit seront admis à réclamer à la caisse le payement de leurs indemnités.

Les décisions judiciaires n'emporteront hypothèque que si elles sont rendues au profit de la caisse des retraites exerçant son recours contre les chefs d'entreprise ou les compagnies d'assurances

**27.** Les compagnies d'assurances mutuelles ou à primes fixes contre les accidents, françaises ou étrangères, sont soumises à la surveillance et au contrôle de l'Etat et astreintes à constituer des réserves ou cautionnements dans les conditions déterminées par un règlement d'administration publique.

Le montant des réserves ou cautionnements sera affecté par privilège au payement des pensions et indemnités.

Les syndicats de garantie seront soumis à la même surveillance et un règlement d'administration publique déterminera les conditions de leur création et de leur fonctionnement.

Les frais de toute nature résultant de la surveillance et du contrôle seront couverts au moyen de contributions proportionnelles au montant des réserves ou cautionnements, et fixés annuellement, pour chaque compagnie ou association, par arrêté du ministre du commerce.

**28.** Le versement du capital représentatif des pensions allouées en vertu de la présente loi ne peut être exigé des débiteurs.

Toutefois, les débiteurs qui désireront se libérer en une fois pourront verser le capital représentatif de ces pensions à la caisse nationale des retraites, qui établira à cet effet, dans les six mois de la promulgation de la présente loi, un tarif tenant compte de la mortalité des victimes d'accidents et de leurs ayants droit.

Lorsqu'un chef d'entreprise cesse son industrie, soit volontairement, soit par décès, liquidation judiciaire ou faillite, soit par cession d'établissement, le capital représentatif des pensions à sa charge devient exigible de plein droit et sera versé à la caisse nationale des retraites. Ce capital sera déterminé au jour de son exigibilité, d'après le tarif visé au paragraphe précédent.

Toutefois, le chef d'entreprise ou ses ayants droit peuvent être exonérés du versement de ce capital, s'ils fournissent des garanties qui seront à déterminer par un règlement d'administration publique.

*Titre* V.—DISPOSITIONS GÉNÉRALES.

**29.** Les procès-verbaux, certificats, acte de notoriété, significations, jugements et autres actes faits ou rendus en vertu et pour l'exécution de la présente loi, sont délivrés gratuitement, visés pour timbre et enregistrés gratis lorsqu'il y a lieu à la formalité de l'enregistrement.

Dans les six mois de la promulgation de la présente loi, un décret déterminera les émoluments des greffiers de justice de paix pour leur assistance et la rédaction des actes de notoriété, procès-verbaux, certificats, significations, jugements, envois de lettres recommandées, extraits, dépôts de la minute d'enquête au greffe, et pour tous les actes nécessités par l'application de la présente loi, ainsi que les frais de transport auprès des victimes et d'enquête sur place.

**30.** Toute convention contraire à la présente loi est nulle de plein droit.

**31.** Les chefs d'entreprise sont tenus, sous peine d'une amende de un à quinze francs (1 à 15 fr.), de faire afficher dans chaque atelier la présente loi et les règlements d'administration relatifs à son exécution.

En cas de récidive dans la même année, l'amende sera de seize à cent francs (16 à 100 fr.)

Les infractions aux dispositions des articles 11 et 31 pourront être constatées par les inspecteurs du travail.

**32.** Il n'est point dérogé aux lois, ordonnances et règlements concernant les pensions des ouvriers, apprentis et journaliers appartenant aux ateliers de la marine et celles des ouvriers immatriculés des manufactures d'armes dépendant du ministère de la guerre.

**33.** La présente loi ne sera applicable que trois mois après la publication officielle des décrets d'administration publique qui doivent en régler l'exécution.

**34.** Un règlement d'administration publique déterminera les conditions dans lesquelles la présente loi pourra être appliquée à l'Algérie et aux colonies.

La présente loi, délibérée et adoptée par le Sénat et par a Chambre des députés, sera exécutée comme loi de l'Etat.

Fait à Paris, le 9 avril 1898.

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